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## **The European Corporate Governance Action Plan: Setting priorities**

*Check Against Delivery  
Seul le texte prononcé fait foi  
Es gilt das gesprochene Wort*

Second European Corporate Governance Conference

**Luxembourg, 28 June 2005**

Thank you Chairman.

I should like firstly to thank the Luxembourg Presidency for staging this conference.

In so doing, it is contributing to the creation of a European tradition by following up on the Conference organised by the Dutch Presidency in October 2004. Events such as these enable European academics and practitioners to share their thoughts and experiences. This process advances our work on corporate governance. It contributes to convergence of Corporate Governance practices in Europe, which is, to my mind, the best way to make progress in this area. Future Presidencies will have to comply, or explain why they don't follow the practice of having a Corporate Governance Conference.

Ladies and Gentlemen, when the Commission adopted the Action Plan on Company Law and Corporate Governance, in May 2003, it did so in the midst of the fall-out from a number of major financial scandals. These scandals had prompted a new debate on corporate governance. Confidence had to be restored in the markets. Investors, large and small, were demanding more transparency as well as better information on companies and more say in their operation.

The Commission sought in the Action Plan to provide a balanced response, rather than a knee-jerk reaction. We are now reaching the end of the first phase of the Action Plan. For this reason, Chairman, I believe that this conference could not have been held at a better time.

In a period of two years the Commission has addressed all actions which were identified for the first phase of the Action Plan.

Our action has been based on two key objectives: (1) bringing more transparency in the way companies operate; and (2) empowering shareholders.

In implementing these objectives we have endeavoured to strike a careful balance between empowering shareholders' and yet leaving enough flexibility for management to run companies and to get on with day-to-day business. We have also only legislated where absolutely necessary.

For example, in the areas of remuneration of directors and non-executive directors, the Commission issued Recommendations. These Recommendations seek to promote convergence towards best practice in Member States in these areas. They are not the thin-end of the wedge. The Commission will not follow up with legislation. We have already seen some encouraging moves in Member States, for example on transparency of remuneration. The Recommendations seem to have served their purpose. I see no need to go further at this stage.

There has been much excitement in the press recently on the question of audit committees and whether the 8<sup>th</sup> company law directive on statutory audit, which is in the process of adoption, should contain a requirement for larger public companies to have an audit committee. The proposal has been on the table since October 2004. The opponents of the audit committee seem to have woken up somewhat late in the day. There is, in fact, nothing revolutionary about the proposal: most companies in Europe, who take corporate governance seriously, already have audit committees. I am a pragmatic man. If the directive confirms the now well-established principle of an audit committee as a tried and tested way of ring-fencing the audit function, then I am prepared to live with some flexibility. But we should be clear about what we are doing and avoid introducing woolly new concepts which may do little more than fudge the issue.

In general in the field of Corporate Governance, the 'comply or explain' principle has functioned effectively and kept legislation to a minimum. But shareholders must be given the means to hold management to account and to ensure this principle is effectively enforced. They must, for example, be able to express their views in General Meetings which, essentially means that they must be able to vote. This is the main purpose of the work on shareholders' rights that we are currently doing in the Commission and which is the last of the actions identified to be addressed in the first phase or short-term of the Action Plan.

National laws are often still largely crafted on the basis that companies have mainly local shareholders who come together to discuss the central issues concerning the company and who take decisions together in a meeting. However, this picture no longer reflects the today's reality: in the European Union foreign shareholders in listed companies account for between 30 - 35% in the bigger Member States and up to 70 or even 80% in some smaller ones.

Some Member States, noting the steady decline in participation rates at meetings, have made attempts to address this phenomenon.. However, the exercise of cross-border shareholders' rights still runs into many obstacles. The Commission launched a first public consultation on this question in September 2004. Most of the respondents took the view that action at EU level would be needed, but it should be limited to fixing some basic principles. I fully agree with this approach: it is not our aim to force a "one-size fits all" approach on Member States. We have now launched a second consultation on what those basic principles might be. I would urge those of you who have not yet done so, to respond and give us your comments. The deadline for responses is 15 July. The economic impact of any action must also be fully analysed. My services are working on a comprehensive impact assessment examining the economic impact of the currently existing obstacles to cross-border voting as well as the impact which any action we might take measure is likely to have. We are also doing work in the complementary area of clearing and settlement.

I intend to begin to consider this Autumn how to go about dealing with the issues identified in the second phase or medium term (2006-2008) of the Action Plan. In approaching this task, I will have at the forefront of my mind the better regulation principles which the Barroso Commission has espoused. We will consult fully before taking action and carry out rigorous impact assessments. The Commission consulted on the overall content of the Action Plan in 2003 but time has moved on and if anyone here has further comments at this stage I should be glad to receive them.

Before closing, I should like to a few words on a related topic being addressed this afternoon. As I have already underlined, shareholders should be able to play an effective role as the owners of the companies in which they invest. This may, however, be made more difficult in companies in which Member States retain a stake.

Governments often retain control of privatized companies by granting themselves "special rights" – also known as "golden shares" - that go beyond the rights associated with normal shareholding. Through such rights they often restrict foreign ownership, limit voting rights or influence management decisions in the companies concerned.

Such restrictions are claimed more often than not to preserve the “general interest”. But the truth is that we have agreed in the Community a far reaching regulatory framework exactly in order to ensure the proper protection of the “general interest”.

Although there are certain exceptions, special rights cannot be justified under the Treaty Articles on the free movement of capital as they hinder the proper functioning of the Internal Market. The Commission has taken particular care over the last 10 years to clarify the situation in each Member State and persuade Member States to eliminate such special rights where unjustified. In some cases we had to bring cases before the European Court of Justice.

Overall progress in this endeavour has been good. Over the last decade Member States have either voluntarily or as a result of Court rulings abandoned unjustified special rights in privatized companies, thereby better aligning these firms with best practice corporate governance standards. A report on the current state of play has been prepared on the current situation in all 25 Member States. It will be published shortly but an outline of our research will already be presented to you this afternoon.

Ladies and Gentlemen, to conclude we are entering into a new phase in EU corporate governance. Setting priorities for the future requires in-depth reflection on the potential implications of the new political context as regards our action in the field of corporate governance. More than ever, our action plan must be focused and based on a solid assessment of actual needs of market players and investors. The potential impact of the Action Plan must also be subject to careful and thorough assessment. We will seek to support corporate development and foster growth in an environment of trust and confidence in corporations and markets. Businesses and investors alike need appropriate and efficient regulation, not over-regulation but better regulation.